

Appl. No. 10/648,071
Atty. Docket No. 7193CDQ
Amndt. dated April 4, 2005
Reply to Office Action of January 3, 2005
Customer No. 27752

REMARKS

Claim Status

Claims 1-7, 9-22, and 38-39, are pending in the present application. No additional claims fee is believed to be due.

Claims 8 and 23-37 are canceled without prejudice.

Claims 1 and 39 have been amended to more specifically characterize the claimed invention. Support for these amendments can be found in the specification as exemplified by page 14, lines 1-5. Claims 15 and 19 has been amended to more specifically characterize the claimed invention. Support for these amendments can be found in the specification as exemplified by page 26, lines 16-20, and page 27, lines 2-4. Claim 20 has also been amended to more specifically characterize the claimed invention. Support for this amendment can be found in the specification as exemplified by page 13, lines 14-16.

Claims 3, 4, 6, 10, 11, 16, 18, 21, and 22, have been amended to correct antecedent issues. Support for these amendments can be found in the specification as exemplified by page 18, lines 7-10.

Claims 9 and 15 has been amended to correct transcriptional errors.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §112, Second Paragraph

The Office Action has rejected claims 3-19 and 20-22 as being indefinite and for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended claims 3, 4, 6, 10, 11, 16, 18, 20, 21, and 22, such that the claimed invention is distinctly claimed in the rejected claims 3-7 and 9-22.

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Double Patenting

Claims 23-26 and 28-37 have been rejected under 35 USC § 101 as claiming the same invention as that of claims 1-3 and 5-14 of U.S. Patent No. 6,639,119 issued to Roe et al. Applicant has cancelled claims 23-37 such that the double patenting rejection is no longer applicable.

Rejection Under 35 USC §102(e) Over Yahiaoui et al.

Claims 1-8, 10, 11, 14, 18, and 39, are rejected under 35 USC § 102(e) as being anticipated by U.S. Patent No. 6,060,636 issued to Yahiaoui et al., hereafter "Yahiaoui". However, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Applicant respectfully traverses the rejection by the Office Action because the cited reference does not teach, either expressly or inherently, each and every element of amended claim 1 or amended claim 39.

Regarding claims 1-3 and 39, the Office Action states:

As to claims 1-3, and 39, Yahiaoui discloses an absorbent article adapted to be applied to a wearer's perianal region for receiving feces, the article comprising: a substrate; a means for holding the substrate in contact with the wearer perianal region; and is adapted to receive feces having a first waist region, a second waist region opposed to the first waist region, a crotch region disposed between the first waist region and the second waist region (col. 2, lines 35-44, and col. 8, lines 24-27, where Yahiaoui discloses the invention can be a diaper which is known to have first and second waist regions), the absorbent article comprising: a liquid pervious topsheet; a liquid impervious backsheet joined to at least a portion of the topsheet; an absorbent core disposed between at least a portion of the topsheet and the backsheet (col. 15, lines 24-33), and an effective amount of a feces modifying agent, which decreases the viscosity of the feces (hence, it is interpreted that the agent acts as a reducing agent), disposed in the article such that the reducing agent is available to contact at least a portion of the feces deposited in the article (col. 2, lines 35-57; col. 5, lines 27-35; col. 10, lines 31-52; col. 14, lines 41-58; and col. 15, lines 24-33), wherein the reducing

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agent is selected from the group consisting of sulfites, thiols, alcohols (col. 14, lines 31- 38), mercaptoacetic acid, sodium thioglycolate, thiolactic acid, thioglycoamide, glycerol monothioglycolate, borohydrides, tertiary amines, thiocyanates, thiosulfates, cyanides, thiophosphates, arsenites, phosphines, betaines, hydroxylamine, and LiHB(C₂H₅)₃.

(Office Action pages 3-4).

First, Yahiaoui fails to teach, either expressly or inherently, all of the claim limitations of amended claim 1. Amended claims 1 and 39 recite, in part, that the feces modifying agent “decreases the Hardness of at least a portion of the feces by greater than about 25% at a concentration of no more than about 5 weight percent.”

In contrast, Yahiaoui teaches “structures particularly adapted to receive fluids having viscoelastic properties such as menses, mucous, blood products, feces.” (col. 2, lines 36-38). Yahiaoui teaches that the addition of viscoelastants can reduce the elastic stress and viscosity of menses under certain conditions. (col. 10, lines 54-67; col. 11, lines 1-2). However, Yahiaoui does not teach any effect by the viscoelastant on the Hardness of feces. Therefore, amended claim 1 is not anticipated by Yahiaoui.

Second, regarding claim 2, the Office Action, as noted above, states that Yahiaoui teaches that the viscoelstant is selected from the “group consisting of sulfites, thiols, alcohols” and cites col. 14, lines 31-38 for support. However, Applicant is unable to find support in Yahiaoui for this assertion.

Instead, Yahiaoui teaches that the viscoelastant may be an alkyl polyglycoside. (col. 14, lines 31-32). Yahiaoui further teaches that additives to the viscoelastant may be ethoxylated hydrocarbons or ionic surfactants, or low molecular weight alcohols. (col. 14, lines 35-38). While Yahiaoui does teach the use of low molecular weight alcohols, Yahiaoui does not teach a thiol alcohol as is recited in claim 2. In addition, nowhere does Yahiaoui teach that the viscoelastant can be a sulfite or a thiol as is recited, in part, in claim 2.

Moreover, Applicant can find no support for the assertion by the Office Action that Yahiaoui teaches a viscoelastant which can be selected from the following: “mercaptoacetic acid, sodium thioglycolate, thiolactic acid, thioglycoamide, glycerol monothioglycolate, borohydrides, tertiary amines, thiocyanates, thiosulfates, cyanides, thiophosphates, arsenites, phosphines, betaines, hydroxylamine, and LiHB(C₂H₅)₃.“

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Nowhere does Yahiaoui teach the above listed selections. Therefore, claim 2 is not anticipated by Yahiaoui.

Because claims 1, 2, and 39, are not anticipated by Yahiaoui, Applicant asserts that claims 1, 2, and 39, are in condition for allowance. Moreover, because claims 3-7, 10, 11, 14, and 18, depend from claim 1, Applicant asserts that they too are not anticipated by Yahiaoui and are therefore, in condition for allowance.

Rejection Under 35 USC §103(a) Over Yahiaoui in view of Roe

Claims 12 and 13 have been rejected under 35 USC §103(a) as being unpatentable over Yahiaoui in view of U.S. Patent No. 5,643,588 issued to Roe et al., hereafter "Roe". It is well settled that in order to establish a *prima facie* case of obviousness, three requirements must be met. MPEP §2143. First, there must be some suggestion or motivation, either in the cited references or in the knowledge generally available to one ordinarily skilled in the art, to modify the reference. *Id.* Second, there must be some reasonable expectation of success. *Id.* Third, the cited references must teach or suggest all of the claim limitations. *Id.* Applicant respectfully traverses the rejection of the Office Action.

The suggested combination of documents fails to teach or suggest all of the claim limitations. Claims 12 and 13 depend from claim 1 indirectly. Caselaw provides that "[d]ependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious." *In re Fine*, 837 F.2d 1071, 1076, 5 U.S.P.Q.2D (BNA) 1956 (Fed. Cir. 1988). As discussed previously, Yahiaoui fails to teach or suggest all of the claim elements of claim 1. Similarly, Roe also fails to teach or suggest a fecal modification agent which "decreases the Hardness of at least a portion of the feces by greater than about 25% at a concentration of no more than about 5 weight percent," as is recited, in part, in amended claim 1.

Therefore, neither Yahiaoui nor Roe teach all of the claim elements of amended claim 1. So, amended claim 1 is nonobvious over the suggested combination of documents. Also, because claims 12 and 13 depend from claim 1, they too are nonobvious over the suggested combination. Consequently, Applicant asserts that claims 12 and 13 are in condition for allowance.

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Rejection Under 35 USC §103(a) Over Yahiaoui in view of Wellinghoff et al.

Claims 16 and 17 have been rejected under 35 USC §103(a) as being unpatentable over Yahiaoui in view of U.S. Patent No. 6,046,243 issued to Wellinghoff et al., hereafter "Wellinghoff". Applicant respectfully traverses the rejection by the Office Action because there is no motivation to combine the suggested documents and because the suggested combination of documents fail to teach or suggest all of the elements of the claimed invention.

First, there is no motivation to combine the suggested documents. The Office Action states that:

Yahiaoui discloses the present invention substantially as claimed. However, Yahiaoui does not disclose the reducing agent is releasably attached to at least a portion of the article. Wellinghoff discloses an absorbent material treated with a fecal modifying agent that is releasably attached to at least a portion of the article by hydrogen bonding so as not to react with the released gas (col. 8, lines 46-54; col. 23, lines 9-10; col. 27, lines 35-46). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the reducing agent of Yahiaoui to be releasably attached for the benefits taught in Wellinghoff.

(Office Action page 6).

First, there is no motivation to combine Yahiaoui and Wellinghoff because Yahiaoui teaches away from that combination. Caselaw provides that "[a] reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." *See United States v. Adams*, 383 U.S. 39, 52, 148 USPQ 479, 484 (1966). Also, if a reference is found to teach away from a suggested combination, then there is no motivation to make the suggested combination. *See In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1599 (Fed. Cir. 1988).

As previously discussed, Yahiaoui teaches a viscoelastant which modifies the properties of certain fluids. (col. 10, lines 55-65). Yahiaoui teaches that the viscoelastant can be "an alkyl polyglycoside treating composition." (col. 14, lines 31-37). Yahiaoui further teaches that a viscoelastant, i.e. Glucopon 220UP, is obtained as a 60% solution of

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alkyl polyglycoside in water. (col. 10, lines 55-57). However, Yahiaoui does not teach that the viscoelastant should be a composite having hydrophilic and hydrophobic properties.

In contrast, Wellinghoff teaches “[a] composite for retarding microbiological contamination containing a hydrophobic material... and a hydrophilic material. (abstract). Consequently, one skilled in the art would be discouraged from following the path set out in Wellinghoff because Wellinghoff requires a composite which has two separate components, i.e. a hydrophilic portion and a hydrophobic portion.

Second, the suggested combination of Yahiaoui and Wellinghoff does not teach or suggest all of the claim elements of claims 16 and 17. Applicant can find no support in Wellinghoff for the assertion by the Office Action that Wellinghoff teaches a “fecal modifying agent that is releasably attached to at least a portion of the article by hydrogen bonding so as not to react with the released gas.” (Office Action page 6).

Wellinghoff teaches that the hydrophilic material of the composite “preferably contains... a compound containing amino, amido, or hydroxyl moieties and having a high hydrogen bonding density.” (col. 8, lines 50-53). However, Wellinghoff makes no mention that these hydrogen bonds are used to releasably attach the composite to the surface or the material which is exposed to the composite. (See col. 27, lines 11-29).

Wellinghoff further teaches that the “surface or material that is exposed to the composite can be a portion of a container or part of a substrate placed within the container upon which the composite has been coated as a film or otherwise applied.” (col. 27, lines 11-14). Wellinghoff does not teach or suggest that the composite is releasably attached to the surface to which the composite is applied.

As stated above, the Office Action states that Yahiaoui does not teach that the “reducing agent is releasably attached to at least a portion of the article.” Therefore, the suggested combination of Yahiaoui and Wellinghoff does not teach or suggest all of the claim elements of claims 16 and 17. Specifically, Yahiaoui and Wellinghoff fail to teach or suggest that the “feces modifying agent... is releasably attached to at least a portion of the article,” as is recited, in part, in claims 16 and 17.

Third, even assuming *arguendo* that the suggested combination did teach a “feces modifying agent... is releasably attached to at least a portion of the article,” as is recited, in part, in claims 16 and 17, the suggested combination of documents still does not teach

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or suggest all of the claim elements of amended claim 1. As discussed previously, Yahiaoui fails to teach or suggest a fecal modification agent which "decreases the Hardness of at least a portion of the feces by greater than about 25% at a concentration of no more than about 5 weight percent", as is recited, in part, in amended claim 1. Similarly, Wellinghoff does not teach this element of amended claim 1. Consequently, the suggested combination of Yahiaoui and Wellinghoff does not teach all of the claim elements of amended claim 1. Because amended claim 16 and claim 17 depend from amended claim 1, the suggested combination of Yahiaoui and Wellinghoff also fails to teach all of their claim elements.

For the foregoing reasons, the Office Action has failed to establish a *prima facie* case of obviousness against amended claim 1, amended claim 16, and claim 17. Therefore, amended claim 1, amended claim 16, and claim 17 are nonobvious over the suggested combination of documents. Consequently, Applicant asserts that amended claims 16 and claim 17 are in condition for allowance.

Rejection Under 35 USC §103(a) Over Wellinghoff.

Claims 1-3; 20-22, and 39, have been rejected under 35 USC §103(a) as being unpatentable over Wellinghoff. Applicant respectfully traverses the rejection by the Office Action because Wellinghoff fails to teach or suggest all of the claim elements of the claimed invention.

Regarding claims 1-3 and 39, the Office Action states:

As to claims 1-3, and 39, Wellinghoff discloses an absorbent article adapted to be applied to a wearer's perineal region for receiving feces, the article comprising: a substrate; a means for holding the substrate in contact with the wearer perineal region; receive feces having a first waist region, a second waist region opposed to the first waist region, a crotch region disposed between the first waist region and the second waist region (col. 27, lines 4-45, where Wellinghoff discloses the invention can be a diaper which is known to have first and second waist regions). Wellinghoff does not disclose the absorbent article comprising: a liquid pervious topsheet; a liquid impervious backsheet joined to at least a portion of the topsheet; an absorbent core disposed between at least a portion of the topsheet and the backsheet. However, it is

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old and well known in the art to provide a diaper with a topsheet, backsheet, and absorbent core as claimed.

(Office Action page 7).

First, Wellinghoff does not disclose that the invention can be a diaper as asserted by the Office Action. Instead, Wellinghoff teaches a surface treated with a composite "can be a reusable or disposable mat or sheet including... an absorbent layer for use in diapers." (col. 27, lines 12-45). In addition, Wellinghoff makes no mention of the Hardness of the feces. Moreover, Wellinghoff fails to teach or suggest that the "feces modifying agent decreases the Hardness of at least a portion of the feces by greater than about 25% at a concentration of no more than 5 weight percent," as is recited, in part, in amended claims 1 and 39.

For the foregoing reasons, the Office Action has failed to establish a *prima facie* case of obviousness against amended claims 1 and 39. Therefore, amended claims 1 and 39 are nonobvious over the suggested combination of documents. Because claims 2-3 and 20-22 depend from claim 1, they too are non-obvious over Wellinghoff. Consequently, Applicant asserts that claims 1-3, 20-22, and 39, are in condition for allowance.

Rejection Under 35 USC §103(a) Over Yahiaoui in view of Butterworth et al.

Claims 15 and 19 have been rejected under 35 USC §103(a) as being unpatentable over Yahiaoui in view of U.S. Patent No. 4,077,410 issued to Butterworth et al., hereafter "Butterworth". Applicant respectfully traverses the rejection by the Office Action because the suggested combination of documents does not teach or suggest all of the claim elements of the claimed invention.

The Office Action states:

Yahiaoui discloses the present invention substantially as claimed. However, Yahiaoui fails to disclose the carrier structure includes a brush structure or printed hairs. Butterworth discloses an absorbent article having a brushed surface or printed hairs for the benefit of providing a soft, fibrous outer surface (Butterworth col. 3, lines 16-27 and col. 4, lines 27-43). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the surface sheet of Yahiaoui to have a brushed surface or printed hairs for the benefits taught in Butterworth.

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(Office Action pages 6-7).

First, the suggested combination of Yahiaoui and Butterworth does not teach all of the claim limitations of claims 15 and 19. Claim 15 recites, in part, "wherein the brush structure includes feces modifying agent."

In contrast, Butterworth teaches that the facing sheet 28 can have a napped, fibrous outer surface 30 via a mechanical after treatment such as brushing, abrading, sueding, or the like. (col. 6, lines 22-27). Butterworth further teaches that a surface active agent "is deposited as a spray on the fiber elements of facing sheet 28 and promotes liquid transport from outer surface 30 to absorbent batt 33." (col. 6, lines 27-30). Butterworth makes no mention of a surface active agent being deposited on the fibers of the fibrous outer surface 30. Because the Office Action states that Yahiaoui fails to teach or suggest a brush structure, the suggested combination of Yahiaoui and Butterworth does not teach a brush structure which includes feces modifying agent, as is recited, in part, in amended claim 15.

In addition, amended claim 19, recites, in part, "wherein at least some of the three-dimensional structures comprise printed hairs, wherein the printed hairs include feces modifying agent thereon." As discussed above, Butterworth does not teach a feces modifying agent which is deposited on the fibers of the fibrous outer surface. Because the Office Action states that Yahiaoui fails to teach or suggest a brush structure or printed hairs, the suggested combination of Yahiaoui and Butterworth does not teach a feces modifying agent which is disposed on the printed hairs as is recited, in part, in amended claim 19.

Second, even assuming *arguendo* that the suggested combination did teach the claim elements added by amended claims 15 and 19, the suggested combination of documents still does not teach or suggest all of the claim elements of amended claim 1. As discussed previously, Yahiaoui fails to teach or suggest a fecal modification agent which "decreases the Hardness of at least a portion of the feces by greater than about 25% at a concentration of no more than about 5 weight percent", as is recited, in part, in amended claim 1. Similarly, Butterworth does not teach or suggest this element of amended claim 1. Consequently, the suggested combination of Yahiaoui and Butterworth does not teach or suggest all of the claim elements of amended claim 1. Because claims

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15 and 19 depend from amended claim 1, the suggested combination of Yahiaoui and Butterworth also fails to teach all of their claim elements.

For the foregoing reasons, the Office Action has failed to establish a *prima facie* case of obviousness against amended claim 1, amended claims 15 and 19. Therefore, amended claims 1, 15, and 19, are nonobvious over the suggested combination of documents. Consequently, Applicant asserts that amended claims 15 and claim 19 are in condition for allowance.

Rejection Under 35 USC §103(a) Over Yahiaoui in view of Al-Sabah.

Claim 38 has been rejected under 35 USC §103(a) as being unpatentable over Yahiaoui in view of U.S. Patent No. 5,868,723 issued to Al-Sabah, hereafter "Al-Sabah". Applicant respectfully traverses the rejection by the Office Action because the suggested combination of documents does not teach or suggest all of the elements of the claimed invention.

The Office Action states:

In reference to the structure of the waist regions, crotch region, topsheet, backsheet, and absorbent core Yahiaoui discloses the present invention substantially as claimed (see 102 rejection of claim 1). However, Yahiaoui does not disclose a responsive system including a sensor operatively connected to the article. Al-Sabah discloses an absorbent article comprising an acoustic transducer 29 and an actuator 43, which comprises a power source 42 (Figure 7). The actuator performs a responsive function when the sensor detects an input (Abstract).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Yahiaoui to incorporate a sensor as taught in Al-Sabah. Doing so would provide a means for alerting the user or a health care professional of the presence of the waste material.

The invention of Yahiaoui/ Al-Sabah provides a sensor adapted to detect an input, and an actuator operatively connected to the article, the actuator being adapted to deliver an effective amount of a reducing agent to the feces when the sensor detects the input.

(Office Action pages 8-9).

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The suggested combination does not teach all of the elements of claim 38. Claim 38 recites, in part, that a responsive system includes "a sensor... adapted to detect an input... and an actuator adapted to deliver an effective amount of a feces modifying agent to the feces when the sensor detects the input." In contrast, Al-Sabah teaches an apparatus 10 which includes an "audio indicating means 40 connected to the moisture sensing means 20." (col. 4, lines 57-59). Al-Sabah further teaches that an "audible alarm sound generator 43 is... responsive to the moisture sensors 22, 23 for generating an audible alarm sound." (col. 5, lines 1-4). However, Al-Sabah is does not teach or suggest that the audio indicating means is adaptable or capable of delivering a feces modifying agent to feces as is recited, in part, in claim 38.

As stated by the Office Action, Yahiaoui does not disclose a responsive system including a sensor operatively connected to the article. Therefore, the suggested combination of Yahiaoui and Al-Sabah fail to teach or suggest all of the elements of the claimed invention. Consequently, claim 38 is nonobvious over the cited documents and Applicant asserts that claim 38 is in condition for allowance.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 USC § 102(e) and § 103(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-7, 9-22, and 38-39, is respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By 
 Signature
 Jay A. Krebs

Date: 4-4-05
 Customer No. 27752

Typed or Printed Name
 Registration No. 41,914
 (513) 634-4856

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